

## Personal Services Contracts

### 1. Personal Services Contracts Defined

- a. Personal services contracts include, but are not limited to: a contract or member of a class of contracts, that the local contracting agency's Local Contract Review Board (LCRB) has designated as a personal services contract pursuant to ORS 279A.055. Personal services include but are not limited to the following:
  - (1) Contracts for services performed as an independent contractor in a professional capacity (e.g., services of an accountant, attorney, data processing consultant, etc.);
  - (2) Contracts for services as an artist in the performing or fine arts (e.g., photographer, painter, etc.);
  - (3) Contracts for services that are specialized, creative and research oriented;
  - (4) Contracts for services as a consultant;
  - (5) Contracts for educational consulting services.
- b. Personal services contracts may include: (1) public contracts for architectural, engineering and land surveying and related services, or (2) other public contracts for nonconstruction services.

### 2. Personal Services Contracts - Procurement Requirements

- a. Contracts for personal services not exceeding \$5,000 within a 12-month period will be awarded in accordance with the small procurement rule established by the superintendent or designee pursuant to Board policy DJC - Bidding Requirements.
- b. Contracts for personal services greater than \$5,000 that do not exceed \$25,000 within a 12-month period, shall, where practical, be based on written or verbal quotes or may be procured through direct negotiations with the contractor. Factors other than price may be considered including but not limited to specialized knowledge or expertise, availability within the time frame the services are needed, service quality with respect to prior services provided to the district and other factors related to the quality and professionalism of the service provider. The procurement file maintained by the district will document the price quotes obtained for such services, as well as any factors other than price taken into consideration in the procurement process.
- c. Contracts for personal services greater than \$25,000 that do not exceed \$75,000 may be based on three written or verbal quotes (when available), or response to a request for proposal (RFP) as deemed appropriate by the superintendent or designee. When relying on written or verbal quotes, the procedures related to documentation and consideration of factors other than price as specified in Section 3. b. of this procedure, will apply.

- d. Contracts for personal services greater than \$75,000 shall be based on a formal competitive solicitation process using the request for proposal (RFP) process.
- e. Except as otherwise provided in the rules applicable to small procurements, the district may enter into a personal services contract when the amount of the services does not exceed \$75,000 without obtaining quotes or utilizing the RFP process when only one contractor or sole source provides the services as follows:
  - (1) The superintendent or designee shall make the following written findings for inclusion in the contract file:
    - (a) That the efficient utilization of existing goods requires the acquisition of compatible goods or services;
    - (b) That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source;
    - (c) That the goods or services are for use in a pilot or an experimental project; or
    - (d) Other findings that support the conclusion that the goods or services are available from only one source.
- f. If the cost of the services is more than \$75,000, the district may award a contract on a sole source basis, only with Board approval and if prior to the award:
  - (1) Notice of the district's intent to contract for the services, including the general specifications of the intended contract, is advertised in at least one newspaper or trade journal of general circulation in the area where the services are to be performed;
  - (2) The advertised notice is published at least 14 days before award of contract to allow prospective contractors a reasonable opportunity to submit a protest of the district's intent to contract through the sole source process unless the superintendent gives prior written approval to reduce the number of days based on extraordinary circumstance that do not meet the criteria for an Emergency Procurement pursuant to OAR 137-047-0280; and
  - (3) The protest shall be submitted in writing to the district by the closing date and time of the advertisement notice. It shall state the reason the contract should be competitively solicited.

Protests shall be heard by the Board, whose decision shall be final.

### 3. RFP Requirements

- a. A request for proposal (RFP) will be used when a competitive procurement process is required under this policy REGULATION. In such cases, the solicitation document will describe the specific services to be performed within a defined period of time. The solicitation document will also set forth criteria and methods for screening, selecting and ranking the most qualified proposal(s). The solicitation document may result in contracts with more than one provider.
- b. The solicitation document must provide that the district is not responsible for any cost incurred while submitting proposals and that all proposers who respond do so at their own expense.

- c. The solicitation document must, at a minimum, address the following:
- (1) Requirements for solicitation documents under ORS 279B.055 (2) and 279B.060 (2):
    - (a) A time and date by which the bids or proposals must be received and a place at which bids must be submitted, and may, in the sole discretion of the contracting agency, direct or permit the submission and receipt of bids or proposals by electronic means;
    - (b) The name and title of the person designated for receipt of bids or proposals and the person designated by the contracting agency as the contact person for the procurement, if different;
    - (c) A procurement description;
    - (d) A time, date and place that prequalified applications, if any, must be filled and the classes of work, if any, for which bidders must be prequalified in accordance with ORS 279B.120;
    - (e) A statement that the contracting agency may cancel the bid or procurement, or reject any of all bids in accordance with ORS 279B.100;
    - (f) A statement that “Contractors shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.” if the invitation to bid is issued by a state contracting agency;
    - (g) A statement that requires the contractor or subcontractor to possess an asbestos abatement license, if required under ORS 468A.710; and
    - (h) All contractual terms and conditions applicable to the procurement.
  - (2) Requirements for solicitation documents under 137-047-0260 (2):
    - (a) General Information.
      - i) Notice of any pre-offer conferences as follows:
        - a) The time, date and location of any pre-offer conferences; and
        - b) Whether attendance at the conference will be mandatory or voluntary; and
        - c) A provision that provides that statements made by the contracting agency’s representatives at the conference are not binding upon the contracting agency unless confirmed by written addendum;
      - ii) The form and instructions for submission of proposals and any other special information, e.g., whether proposals may be submitted by electronic means;
      - iii) The time, date and place of opening;
      - iv) The office where the solicitation document may be reviewed;
      - v) Contractor’s certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110 (4); and
      - vi) How the contracting agency will notify proposers of addenda and how the contracting agency will make addenda available.

(b) Contracting Agency Need.

The character of the goods and services the contracting agency is purchasing including, if applicable, a description of the acquisition, specifications, delivery or performance schedule, inspection and acceptance requirements.

(c) RFP Evaluation Process.

- i) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;
- ii) The contracting agency shall set forth selection criteria in the solicitation document in accordance with the requirements or ORS 279B.060 (2)(h)(E).
- iii) If the contracting agency intends to award contracts to more than one proposer pursuant to OAR 137-047-0600 (4)(d), the contracting agency must identify in the solicitation document the manner in which it will determine the number of contracts it will award.

(d) Applicable preferences described in ORS 279A.125 (2) and 282.210.

(e) For contracting agencies subject to ORS 305.385, contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) All contract terms and conditions, including a provision indicating whether the contractor can assign the contract, delegate its duties, or subcontract the goods or services without prior written approval from the contracting agency.

d. The RFP must be advertised at least once in a newspaper of general circulation in the area where the contract is to be performed and in as many additional issues and publications as may be necessary or desirable to achieve adequate competition unless the contracting agency uses electronic advertising.

e. Unless otherwise specified in rules adopted pursuant to ORS 279A.065, the LCRB will give notice at least seven days before the solicitation closing date.

f. All advertisements shall describe at minimum the requirements under OAR 137-047-0300 (3):

- (1) Where, when, how, and for how long the solicitation document may be obtained;
- (2) A general description of the goods or services to be acquired;
- (3) The interval between the first date of notice and closing, which will be at least seven days, unless a shorter period is in the public interest and it will not substantially affect competition;
- (4) The date that persons must file applications for prequalification if prequalification is a requirement and the class of goods or services is one for which persons must be prequalified;
- (5) The office where contract terms, conditions and specifications may be reviewed;
- (6) The name, title and address of the individual authorized by the contracting agency to receive offers;
- (7) The scheduled opening; and
- (8) Any other information the contracting agency deems appropriate.

#### 4. Screening and Selection Procedures

- a. The superintendent or designee shall review, score and rank all responsive proposals according to the evaluation criteria in the RFP and applicable law. The contracting agency will award the contract to the lowest responsible proposer or multiple responsible proposers in accordance with ORS 279B.060 (10) and OAR 137-047-0600.
- b. To determine whether the proposer has met the standards of responsibility under ORS 279B.110 (2) and OAR 137-047-0640 (1)(c)(F), the LCRB will consider whether the proposer has:
  - (1) Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to indicate the capability of the proposer to meet all contractual responsibilities;
  - (2) A satisfactory record of performance<sup>1</sup>. The contracting agency will document in the solicitation file its basis for determining that the offeror is not responsible because the offeror does not meet this requirement;
  - (3) A satisfactory record of integrity<sup>2</sup>. The contracting agency will document its basis for determining that the offeror is not responsible because the offeror does not meet this requirement;
  - (4) Qualified legally to contract with the contracting agency;
  - (5) Supplied all necessary information in connection with the inquiry concerning responsibility. If an offeror fails to promptly supply information requested by the contracting agency concerning responsibility, the contracting agency shall base the determination of responsibility upon any available information, or may find the bidder or proposer not to be responsible; and
  - (6) Not been debarred by the contracting agency under ORS 279B.130.
- c. Final ranking will be based on all information obtained during the evaluation process. Price will be considered, but will not necessarily govern selection of the contractor(s).
- d. Contracts entered into may be amended, provided the original contract allows for the particular amendment and the services to be provided under the amendment are included within or directly related to, the scope of the project or the scope of the services described in the solicitation document.

#### 5. Documentation

Documentation providing evidence of competition shall be maintained by the district for all contracts entered into by the district.

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<sup>1</sup>The district should review carefully the offeror's record of contract performance if the offeror is or recently has been materially deficient in contract performance. In reviewing the offeror's performance, the district should determine whether the offeror's deficient performance was expressly excused under the terms of the contract, or whether the offeror took appropriate corrective action. The district may review the offeror's performance on both private and public contracts.

<sup>2</sup>The district may determine that an offeror lacks integrity because of a lack of business ethics such as a violation of environmental laws or false certification made to the contracting agency. The district may find that an offeror is not responsible based on a lack of integrity of a person having influence or control over the offeror.

6. Fingerprinting

If the scope of the work performed by a contractor(s) or his/her employee(s) may result in direct, unsupervised contact with students, he/she will be required to submit to fingerprinting and criminal records checks as required by law.

7. Payment

Payment will be made only upon completion of the performance of specific portions of the project or on the basis of an annual or periodic retainer as specified by the district in the personal services contract.